

LEGISLATION

AGAINST

SPECULATION

AND

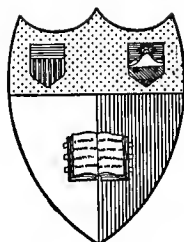
GAMBLING IN THE FORMS OF TRADE

BY

T. HENRY DEWEY

OF THE NEW YORK BAR

HG6032
UGD5



New York
State College of Agriculture
At Cornell University
Ithaca, N. Y.

Library

DATE DUE

~~AUG 9 '82~~

MAY 18 '84 MY 17

NOV 5 - 9 - 87

HIGHSMITH 45-220

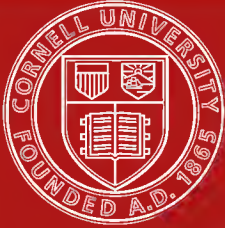
Cornell University Library
HG 6032.U6D5

Legislation against speculation and gamb



3 1924 014 043 826

mas



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

LEGISLATION

AGAINST

SPECULATION

AND

GAMBLING IN THE FORMS OF TRADE

INCLUDING

“Futures” “Options” and “Short Sales”

BY

T. HENRY DEWEY

OF THE NEW YORK BAR

AUTHOR OF “CONTRACTS FOR FUTURE DELIVERY” AND
“SHORT SALES ON THE STOCK EXCHANGE”

NEW YORK
BAKER, VOORHIS & COMPANY
1905

@
HGG032
UGD5

@ 34174

P R E F A C E .

In a treatise entitled "Contracts for Future Delivery and Commercial Wagers," published in 1886, my object was to make clear the distinction between speculation and gambling on prices of stocks and produce. There were then four states which had on their statute books laws against certain peculiar kinds of speculation and gambling in the forms of trade and about two hundred and fifty cases with which the subject was illustrated. Since then the number of cases has more than doubled, and statutes of a similar character have been enacted in nineteen additional states, manifesting and illustrating the hostile attitude of the courts, and more especially of the public, toward speculation. This great increase of litigation and legislation demonstrates the importance of the subject and seems to justify a compilation of the statutes of the several states, which it is hoped will be of value not only to lawyers but also to those interested in the subject either as merchants, moralists or political economists. Speculation is now everywhere attracting the attention of political economists and its value as an economic factor is receiving increased recognition; and the general course of legislation as shown in Congress, in the great commercial State of New York and in European countries, justifies the belief that ultimately the legislative power will cease its attempt to restrain the higher and more complicated forms of speculation. There is no dispute as to the evils of gambling, either on prices of stocks and commodities, or in any other form; nor will any one question the right of legislatures to regulate trade and prohibit business methods which are contrary to public policy; but whether speculation, even in its somewhat artificial forms of futures, options, short

sales and stock jobbing, should be treated as gambling on prices, is a point upon which jurists, economists and moralists differ. There ought, however, to be no difference of opinion as to whether a given state of facts constitutes lawful speculation or illegitimate gambling; but it is precisely here that the utmost confusion exists, as appears not only in the statutes but also in the reported cases. Until the distinction between speculation and gambling on prices is more clearly observed, it is likely that speculation in its higher forms will be treated as gambling.

THE DISTINCTION BETWEEN SPECULATION
AND GAMBLING ON PRICES.

SPECULATION AND GAMBLING ON PRICES DEFINED.—

Speculation is an attempt to gain money from fluctuation, either a rise or a fall, in market prices. Trade, as distinguished from barter, is buying property for the purpose of reselling it in the future, in the hope of making a profit from a rise in price. The trader is, therefore, a speculator. Selling produce "short" is selling it for future delivery when the seller does not own the property at the time of the sale but hopes to be able to buy it at a less price when or before the time for delivery arrives, thus making a profit from a fall in price. The short seller is, therefore, a speculator. The only difference between the two is that the trader buys and then sells, and the short seller contracts to sell and afterwards buys. In both cases there must be a future delivery, the first on the resale and the second on the purchase. In a "short sale" of stock the contract for future delivery employed is a contract of borrowing. The seller does not, at the time of the sale, own any of the stock sold, but he borrows the same amount of stock from one who does own it and delivers the borrowed stock to the purchaser. The seller must return the stock to the lender and for this purpose he must buy it at some future time. He hopes to be able

to buy it at a less price than he sold it at and thus make a profit of the difference between the two prices. A producer is not a trader and yet he may be holding his produce for a rise in price, and then he occupies, morally and economically, the same position as the trader who has bought and is holding for a rise in price. In all these cases the result of the speculation depends on an uncertain future event, to wit: the market price of the commodity dealt in at the time of the future sale or the future purchase.

Gambling on prices is betting on the rise or fall in market prices by means of pretended purchases and sales or pretended employment as a broker or commission merchant to make pretended purchases and sales. In other words, it is using the forms of buying or selling, or the forms of employment to buy and sell, where no real buying or selling or real employment is contemplated, the parties agreeing to settle with each other by the mere payment of differences between the prices of pretended purchases and pretended sales.

Thus it appears that in speculation and in gambling on prices the result depends upon an uncertain future event. The difference is that, in one the parties are engaged in legitimate business beneficial to both of them, while, in the other they are engaged in an idle and useless occupation beneficial only to the party winning and, when carried to an excess, injurious to society.

IMPLEMENTS OF SPECULATION.—The main instrument of the modern speculator is the modern contract for future delivery. It is called on the produce exchanges an "option" and on the cotton exchanges a "future." Those peculiar instruments of speculation known as "puts," "calls" and "straddles," while prohibited on most of the exchanges, are nevertheless used by speculators who like them. All of these instruments are, or at least involve, contracts for future delivery and they are very intricate both in their nature and in their uses. "Short sales"

of produce and cotton are made by means of these contracts, and even the ordinary "short sale" of stock involves a contract of borrowing which is a contract for future delivery. Stock certificates, elevator receipts, warehouse receipts or other symbols of the commodities dealt in, as well as an organized market, in which uniform methods of dealing are enforced, are also required.

THE IMPLEMENTS OF GAMBLING ON PRICES.—The usual implements of gambling on prices are a black-board, upon which are posted from time to time the market prices of stocks, cotton and other produce, slips of papers purporting to be orders to the keeper of the place to buy or sell for the account of the other party and other slips of paper purporting to be notices of purchases or sales made by the keeper of the place for the account of the other party. Each transaction is settled by the payment of the difference between the price of a pretended purchase and the price of a pretended sale, it being agreed or understood that no delivery of the things pretended to have been bought and sold is ever to be made. A deposit is required by the keeper of the place which is called a margin, but is really security to him for the payment of the wager. If the market goes in his favor, he closes the transaction as soon as the fluctuation in price equals the amount of the deposit, which he then keeps; or it may be closed by the other party at any time before the loss to him equals the amount of the deposit. If the market goes in favor of the other party, the transaction is closed whenever he gives an order for that purpose, and then the keeper of the place pays to him the difference between the market prices of the pretended purchase and sale and returns the deposit. A place in which such pretended dealing is carried on is called a "bucket-shop."

So far as the things done in a "bucket-shop" go, it is impossible to distinguish them from the things done

in the offices of brokers or commission merchants; and, whenever the keeper of a "bucket-shop" is proceeded against, he claims that he is a broker or commission merchant, or at least, that the business of a broker or commission merchant does not differ from his; and generally, so far as practical results are concerned, it must be admitted that no distinction can be made. There are hundreds of brokers and commission merchants, members of regular exchanges, who do considerable business and never handle and never intend to make or receive delivery of the commodities dealt in. This, however, does not make them gamblers. There are also many brokers and commission merchants, members of our exchanges, who habitually or occasionally receive orders from their customers and pretend that they have executed them, but, in fact, have not done so. This is called "bucketing the orders;" and, if known by and acquiesced in by the customer, as in many cases it is, it would constitute gambling in prices. Sometimes the forms of trade used as a cover for gambling on prices consist of contracts of purchase and contracts of sales; but the forms usually adopted in "bucket-shops" are those of pretended employment of the keeper as a broker or commission merchant to make pretended purchases and sales.

THE OBJECT OF THE SPECULATOR AND THE GAMBLER ON PRICES.—The object of the speculator and the gambler is the same: it is to make a difference between prices; but the prices between which the speculator makes his profit are the prices of actual purchases and sales, whereas, the gain of the gambler is the difference between the prices of fictitious or pretended purchases and sales. In speculation, the delivery of the things bought and sold may always be, though seldom is, insisted upon; whereas, in gambling, delivery can never be made or required. The speculator deals, that is, buys and sells things for a difference in prices, and the gambler "deals in differences" in prices. They speculate on the exchanges; they

gamble in the "bucket-shops." This distinction is a real one; and a failure to recognize it causes great confusion in much of the legislation and in many judicial decisions. It may be argued that the results of speculation and gambling on prices are, morally and practically, the same, and perhaps both should be prohibited, but nothing can be gained, morally or economically, in declaring, by legislative enactment or judicial decision, that speculation of any kind is gambling.

THE TRUE TEST.—It follows from what has been said that the test of whether any given state of facts constitutes speculation or gambling on prices is, not whether actual delivery was made or intended, but whether the right of the buyer to require, and of the seller to make, actual delivery, existed. It may as well be admitted that the speculator, in the great majority of cases, does not intend to make or receive delivery, but he has the right to make or receive delivery, and he would be obliged to make or receive delivery but for the fact that the modern methods of doing business enable him, or the broker or commission merchant employed by him, to complete his speculation by doing things which avoid, but are equivalent to, delivery. In every "grain option" and "cotton future," both parties have the legal right to require delivery of the commodity dealt in, although actual delivery is not made in more than one case in a hundred. Delivery is avoided by "direct settlements," "ring settlements" or "clearing house settlements." Even in "puts" and "calls," the party owning the privilege has a right to require a delivery of the subject-matter of the option, and, indeed, it is this right which makes it valuable. In "bucket-shops," it is thoroughly understood that no one has the right to make or demand delivery of the commodity pretended to be dealt in: the dealing is fictitious, and the forms of legitimate business are

used merely as a convenient way of, or a cover for, betting on the fluctuations in market prices.

RESPONSIBILITY OF THE EXCHANGES.

That the proper distinction between speculation and gambling on prices should be observed, is of the greatest importance to stock brokers and commission merchants, especially those who are members of organized exchanges; because it is by and through them that modern speculation is almost exclusively carried on. A long experience, however, in matters connected with our prominent exchanges and a knowledge of their rules and customs have led me to the conclusion that they are much to blame for the hostile attitude of the public and the courts toward speculation. Most of the exchange members speak, act and testify in court, in regard to their future delivery business, as though they contemplated only differences in prices, and not buying and selling stocks and commodities; and several prominent exchanges have adopted rules, which lead their members to talk and act as though they contemplated differences in prices only; and most of the business done under those rules must be declared unlawful by the courts according to many of the statutes. The desire to facilitate the business of speculation has caused many of the exchanges to lose sight of the legal and moral questions involved. Their rules and the customs prevailing among the members have reduced actual delivery of the things dealt in to almost the vanishing point, so that, in the great majority of cases, it is impossible to see, or truthfully say, that trading is done in view, and with the expectation, of actual delivery. In a recent case, the court found that in about ninety-five per cent. of the future delivery business done on one of our most prominent exchanges actual delivery was not intended; and, from my own observation, I think that ninety-nine per cent. would generally be a more correct estimate. It is indeed difficult to make much of a prac-

tical distinction between a system of doing business on an exchange which reduces the chances of actual delivery to one in a hundred and an agreement in a "bucket-shop" that there shall be no delivery whatever; and, when an exchange loses sight of even that distinction, as some of them do, it places itself in the category of "bucket-shops."

The rules and practices of the exchanges could be made to correspond, instead of conflict, with the law and morality, if the proper attention were given to the subject; and much more would be accomplished by activity in that direction than in the effort to drive out "bucket-shops," whose greatest fault in the eyes of the exchanges is the largeness of the amount of business which the bucket-shops attract from the exchanges.

Many of the American exchanges discriminate against dealing in privileges ("puts" and "calls"), which have as important a function in speculative business as other contracts for future delivery. This is illogical and adds to the confusion. To buy or sell a "put" or a "call" on stock, grain or cotton is no more gambling than to buy an option on a mine or on a lease of real estate, and, for many business purposes, these privileges are as valuable and important as the ordinary contracts for future delivery called "cotton futures" and "grain options."

The most potent factor, however, in creating public opinion against speculation, is the fact that a large number of regular brokers and commission merchants, members of exchanges in good standing, in the conduct of the business of their customers, do irregular, unauthorized and even unlawful things, which, in effect, reduce the transactions from real business to a mere "dealing in differences in prices." These practices are so common and so destructive of all semblance to real business as to create a feeling that the exchanges are, so far as their future delivery business is concerned, no better than or different from "bucket-shops," and this feeling has

found a partial expression in some of the statutes in provisions against "bucket-shopping." The term "bucket shopping," as used in the statutes, means ostensibly carrying on the real business of a broker or commission merchant but actually doing the pretended business of a "bucket-shop;" it also, in common parlance as applied to a broker or commission merchant, means representing to a customer that he has made actual contracts for his account, when, in fact, he has not done so, or representing to a customer that he is holding and carrying contracts for his account, when, in fact, he has wrongfully converted them to his own use. The devices by which "bucket-shopping" is accomplished are various and intricate, but the result intended by the broker or commission merchant is always to reduce the transactions to a mere payment of differences in prices.

THE SCOPE OF THIS WORK.

The following compilation of the statutes which specifically refer to the subjects of speculation and gambling on prices, has been made in the belief that the consecutive presentation of them will demonstrate the confusion, inconsistency and absurdity of the attitude of the public manifested in them. To discuss the reasons and causes of this is not within the author's present purpose, further than to ascribe it to the failure to understand the true function and importance of speculation and to properly discriminate between speculation and gambling on prices.

Some of the decisions disclose a full appreciation of the subject; and the general course of legislation in this country and in Europe, as shown by the enactment of some laws and the repeal of others, indicates a decided tendency toward non-interference with the natural courses of trade. An historical review of that legislation will be the subject-matter of a subsequent work. This is simply a compilation of existing statutes, with explanatory remarks upon some of them. They are arranged in

chapters representing: first, the statutes designed to restrain speculation, although some of them relate also to gambling on prices; second, the statutes designed to prevent gambling places, called "bucket-shops," gambling practices called "bucket-shopping," and gambling in the forms of trade; and third, statutes expressly permitting speculation. There are not many statutes of the last class; the legislature in most instances being content with the mere repeal of laws in restraint of trade.

T. HENRY DEWEY

48 Wall Street,
New York City.

CHAPTER I.

STATUTES AGAINST SPECULATION.

Arkansas Statute against Dealing in Futures.....	15
California Constitutional Provision against Dealing in Stock on Margins or for Future Delivery.....	16
Canadian Statute against Speculation and Bucket- Shops	17
Georgia Statute against Short Sales.....	19
Illinois Statute against Options, Forestalling and Corners	19
Indian Territory Statute against Dealings in Futures	21
Kansas Statute against Short Sales, Speculation and Bucket-Shops	21
Louisiana Constitutional Provisions against Dealing and Gambling in Futures.....	24
Louisiana Statute against Dealing and Gambling in Futures	25
Massachusetts Statute against Short Sales of Bonds and Stock	25
Massachusetts Statute against Speculation or Wag- gering Contracts in Securities and Commodities...	26
Mississippi Civil Statute against Futures.....	29
Mississippi Criminal Statute against Dealing in Futures	29
Mississippi Memorial to Congress to Prohibit "Future Dealing"	30
Missouri Statute against Options, Marginal Pur- chases or Sales and Bucket-Shops.....	31
New York Statute against Short Sales by Officers of Corporations	35
North Carolina Statute to Suppress and Prevent Futures	35
North Carolina Statute Prohibiting Dealing in Fu- tures in the Town of Reidsville.....	38
Ohio Statute against Options, Forestalling and Corners	39
Ohio Statute against Gambling, Bucket-Shops, Speculation and Corners.....	40
South Carolina Statute against Short Sales and Con- tracts of Sale for Future Delivery.....	45
Tennessee Statute against Contracts for Future De- livery	48
Texas Statute against Dealing in Futures.....	49

CHAPTER II.

STATUTES AGAINST GAMBLING IN THE FORMS
OF TRADE, INCLUDING BUCKET-
SHOPS AND BUCKET-SHOPPING.

	PAGE.
Colorado Statute to Prevent Children from Fre- quentering Bucket-Shops.....	51
Connecticut Statute Relating to Bucket-Shop Busi- ness	51
Illinois Statute against Bucket-Shops and Bucket Shopping	52
Iowa Statute against Bucket-Shops.....	54
Michigan Statute against Bucket-Shops, Short Sales and Transactions on Margins or for Future or Optional Delivery	55
Missouri Statute Defining and Prohibiting Bucket- Shops	57
New Hampshire Statute against Wagering Contracts	60
New York Statute against Keeping Bucket-Shops..	60
Vermont Statute against Bucket-Shops and Specu- lation	61
Wisconsin Statute against Bucket-Shops and Bucket- Shopping	62

CHAPTER III.

STATUTES PERMITTING SPECULATION AND
GAMBLING IN THE FORMS OF TRADE.

English Statute Authorizing Short Sales.....	66
New York Statute Authorizing Short Sales.....	66
Wisconsin Statute Authorizing Short Sales.....	67
Wisconsin Statute Making Board of Trade Trans- actions Prima Facie Valid	67
Louisiana Statute Permitting Short Sales.....	68
North Carolina Statute Taxing Dealers in Futures..	68
Tennessee Statute Providing for Taxing of Privi- leges by the City of Memphis.....	69
Virginia Statute Licensing Dealing in Options and Futures	69
West Virginia Statute Licensing Bucket-Shops....	70
California Statute Permitting Short Sales.....	71
Montana Statute Permitting Short Sales.....	71
North Dakota Statute Permitting Short Sales.....	71
South Dakota Statute Permitting Short Sales.....	71

CHAPTER I.

STATUTES AGAINST SPECULATION.¹

THE ARKANSAS STATUTE AGAINST DEALING IN FUTURES. —“The buying or selling or otherwise dealing in what is known as futures, either in cotton, grain or anything whatsoever, with a view to profit, is hereby declared to be gambling. Whoever shall so engage in dealing in futures in any capacity whatsoever in this state shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than two hundred and fifty dollars and not more than five hundred dollars, and for the second offense, in addition to the penalty above prescribed, such offender shall, upon conviction, be imprisoned in the county jail for the period of thirty days.”²

A “future,” as it is known in the cotton or grain business, is a contract for future delivery. One who buys and sells, that is, deals for future delivery “with a view of profit,” is a speculator. The statute declares him to be a gambler and punishes him as a criminal. The language is perfectly plain: it declares in effect that speculation by means of futures is gambling; and yet the Supreme Court of Arkansas (*Fortenbury vs. State*, 47 Ark., 188), in construing this statute, said: “The act to prohibit dealing in futures is not in restraint of trade. It does not prevent contracts for future delivery when entered into in good faith, but it is intended to suppress mere spec-

¹ This chapter contains statutes against speculation although some of them also contain provisions against gambling in the forms of trade. Chapter II contains statutes primarily against gambling in the forms of trade including bucket-shops and bucket-shopping.

² Digest of the statutes of Arkansas, Sec. 1634, 1635.

ulation upon chances, when the grain, cotton or stocks dealt in, exist only in imagination, and where no delivery is contemplated, but the parties expect to settle upon the differences in the market." It is as difficult to understand what "mere speculation upon chances" is as it is impossible to deal, that is, buy and sell, in things which "exist only in imagination," or deal "where no delivery is contemplated." It is plain, however, that what the court means is that the statute applies only to gambling on market prices. The statute says a speculator is a gambler and the court says a speculator is not a gambler and that the statute means only that one who gambles shall be punished. This statute was intended to punish a speculator who dealt for future delivery, but that intention is nullified by the court. A greater confusion of words and ideas could not be imagined. Considered as a statute against gambling merely it is unnecessary, because the ordinary statute against gambling includes gambling in that form.

THE CALIFORNIA CONSTITUTIONAL PROVISION AGAINST DEALING IN STOCK ON MARGINS OR FOR FUTURE DELIVERY.—
 "All contracts for the sale of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction."¹

This constitutional provision against speculation was adopted at a time when much reckless speculation was carried on in California in buying and selling stock in mining corporations not yet issued. It was designed to prevent such speculation, but, besides failing in its object, it imposed a permanent, unreasonable and unnecessary restriction on trade. Since the mining excitement passed away the only purpose it serves is to enable a few dishonest persons to repudiate their obligations in doing business in a manner recognized as reasonable and proper the world over. This constitutional provision and the provision of the Civil Code of California are in strange contrast with each other. Shares of stock cannot be sold to be

¹ Constitution of California, Art. IV, Sec. 26.

delivered in the future, even though they represent actual property in existence, but anything else can be sold to be delivered in the future, though at the time of the sale it has no existence. There is no conflict here between speculation and gambling, but why one form of speculation should be authorized and the other prohibited, especially when the former is the more artificial, it is impossible to explain.

CANADIAN STATUTE AGAINST SPECULATION AND BUCKET-SHOPS.—“201. Every one is guilty of an indictable offense and liable to five years’ imprisonment, and to a fine of five hundred dollars, who, with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise—

(a.) Without the bona fide intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise; or

(b.) Makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the bona fide intention to make or receive such delivery.

2. But it is not an offense if the broker of the purchaser receives delivery, on his behalf, of the article sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof.

3. Every office or place of business wherein is carried

on the business of making or signing, or procuring to be made or signed, or negotiating or bargaining for the making or signing of such contracts of sale or purchase as are prohibited in this section, is a common gaming house, and every one who as principal or agent occupies, uses, manages or maintains the same is the keeper of a common gaming house. 51 V. c. 42, ss. 1 and 3.

202. Every one is guilty of an indictable offense and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing, or procuring to be made or signed, or the negotiating or bargaining for the making or signing, of such contracts of sale or purchase as are mentioned in the section next preceding is carried on. 51 V., c. 42, ss. 1.

704. Whenever, on the trial of a person charged with making an agreement for the sale or purchase of shares, goods, wares or merchandise in the manner set forth in section two hundred and one, it is established that the person so charged has made or signed any such contract or agreement of sale or purchase, or has acted, aided or abetted in the making or signing thereof, the burden of proof of the bona fide intention to acquire or to sell such goods, wares or merchandise, or to deliver or to receive delivery thereof, as the case may be, shall rest upon the person so charged."¹

This is a well constructed statute and presents a striking illustration of the difference between contracts, purporting to be real contracts but which are in fact pretended contracts, and contracts, purporting to be and are real contracts but where the parties have no intention to make or receive delivery. The first class are described in subdivision (a) and are made in bucket shops. The second class may be made in the exchanges because the speculator there almost always intends to avoid delivery. (See note on the Missouri statute.)

¹ Statutes of Canada, (criminal code), 55 & 56 Victoria, Chap. 29.

THE GEORGIA STATUTE AGAINST SHORT SALES.—“A contract for the sale of goods to be delivered at a future day where both parties are aware that the seller expects to purchase himself to fulfill his contract, and no skill and labor or expense enters into the consideration, but the same is a pure speculation upon chances, is contrary to the policy of the law, and can be enforced by neither party.”¹

Excluding the meaningless phrase, “a merespeculation upon chances,” the language and meaning of this statute is plain; but a little reflection will show that it is economically and morally confusing. Why should a person, who knows where he can buy an article which another person wants, be prohibited from selling it before he purchases it? What is the “policy of the law” that so juggles with words as to say that in such a case he may buy first and sell afterwards, but cannot sell first and buy afterwards? Again, why should a person, say a cotton spinner, who wants cotton delivered to him at a future time and finds some one who is willing to sell it to him and deliver it at the desired time, be prohibited from buying it simply because he knows that the seller does not own the cotton at the time the contract is made but expects afterwards to buy it? In every speculation the speculator runs the “chances” of a loss or a profit. Is it not economically wrong in either case to deny the consumer and the producer the benefit to them which would result from the business risk (chances) which the middleman is willing to take?

THE ILLINOIS STATUTE AGAINST OPTIONS, FORESTALLING AND CORNERS.—“Whoever contracts to have or give to himself or another the option to sell or buy, at future time, any grain, or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any of such commodities, shall be

¹ Civil Code of Georgia, Vol. III, Sec. 3537.

fined not less than \$10 nor more than \$1,000, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void."¹

The options this statute was designed to reach were those peculiar contracts used in speculation called "puts" and "calls," but, as in most cases where the legislative power interferes with the natural courses of trade, it overstepped the mark, and all options to buy or sell any commodity or thing under this statute is unlawful; and it has repeatedly been so held. Admitting that there may be some evil in trading in "puts" and "calls," it cannot consistently be prevented without excluding all other options, and so the remedy is worse than the disease. This statute, so far as it relates to forestalling and cornering the market, is the only remnant left of the old English statutes against forestalling, engrossing and regrating, which were enacted at a time when a trader was considered no better than a robber. Forestalling the market consisted of buying up food products on the way to the open market with the intention of selling in that market. What is meant by the expression "by spreading false rumors" in the Illinois statute, it is difficult to say, but no sensible man would now consider the simple act of forestalling to be an offense to the public. So far as the popular notion of a corner is concerned, it is like the English offense of engrossing, which consisted in buying up large quantities of food products with the intention of selling it at an increased price. No element of fraud or misrepresentation was necessary to the offense under the English statutes, nor is it necessary to the present notion of a corner. The Illinois statute is designed to prohibit speculation by means of options, forestalling the market and cornering it. Much could be written on each of these interesting subjects, but the only pertinent remarks now are that it has entirely failed to suppress, or even to restrain such speculation, and that in time it will doubtless be repealed as were all similar English statutes.

¹ Revised Statutes of Illinois, 590.

INDIAN TERRITORY STATUTE AGAINST DEALINGS IN FUTURES.—“The buying or selling or otherwise dealing in what is known as futures, either in cotton, grain or anything whatsoever, with a view to profit, is hereby declared to be gambling. Whoever shall so engage in dealing in futures in any capacity whatsoever in this state shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than two hundred and fifty dollars and not more than five hundred dollars, and for the second offense, in addition to the penalty above prescribed, such offender shall, upon conviction, be imprisoned in the county jail for the period of thirty days.”¹

THE KANSAS STATUTE AGAINST SHORT SALES, SPECULATION AND BUCKET-SHOPS.—“Every person who shall buy, sell, exchange, or in any other manner deal in grain stocks, bonds, securities, provisions, or any other commodities whatsoever, upon telegraphic or telephone market reports and quotations, it not then being the intention of such person, in pursuance of such purchase, sale, or exchange, to receive or deliver such grain, stocks, bonds, securities, provisions, or other commodities, and the said person selling or agreeing to sell not then being in the possession and control of such grain, stocks, bonds, securities, provisions, or other commodities, shall on conviction be adjudged guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months.

Every person who shall set up, keep or maintain a place commonly known and called a “bucket-shop” or “board of trade,” where telegraphic or telephone market reports and quotations upon grain, stocks, bonds, securities, provisions and other commodities whatsoever

¹ Indian Territory Statutes, Sec. 1191. See note on Arkansas statute which is in the same words.

are received and made public by placing such reports and quotations upon blackboards, or in any other manner made public, and where persons resort or are permitted to resort for the purpose of buying, selling, exchanging or otherwise dealing in grain, stocks, bonds, securities, provisions, or any other commodities whatsoever, where such persons, in pursuance of such purchases, sales, or exchanges, do not then intend to receive or deliver such grain, stocks, bonds, securities, provisions, or other commodities, and where such persons are not then in the possession and control of such grain, stocks, bonds, securities, provisions, or other commodities, and as provided in the preceding section hereof, shall on conviction be adjudged guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months.

Every person who shall knowingly permit or allow any place commonly known as a "bucket-shop" or "board of trade" to be set up, kept and maintained for the purpose of buying, selling, exchanging or in any other manner dealing in grain, stocks, bonds, securities, provisions, and in any other commodities whatsoever, where the person to such transaction and in pursuance of such purchases, sales or exchanges do not intend to receive or deliver such grain, stocks, bonds, securities, provisions, or any other commodities, and where such persons engaging in such purchases, sales and exchanges are not then at such time in possession and control of such grain, stocks, bonds, securities, provisions, or other commodities, and where persons resort and are permitted to resort for the purpose of buying, selling, exchanging or otherwise dealing in grain, stocks, bonds, securities, provisions and other commodities upon telegraphic or telephone market reports and quotations, it not then being the intention of such persons engaging

in such transactions and in pursuance of such purchases, sales or exchanges to receive or deliver such grain, stocks, bonds, securities, provisions, or other commodities, and the said persons not then at such time being in the possession and control of such grain, stocks, bonds, securities, provisions, or other commodities, in any house or building to him belonging, or by him occupied, or of which he has at the time the possession and control, shall on conviction be adjudged guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail of not less than thirty days nor more than six months.

All places used for any of the unlawful purposes mentioned in this act are hereby declared to be nuisances, and upon the judgment of a court having jurisdiction, finding such place to be a nuisance under this section, the sheriff, his deputy or under-sheriff or any constable of the proper county shall be directed to shut up and abate such places by taking possession of all the property used in keeping and maintaining such nuisance, and such personal property so taken shall be forthwith publicly destroyed by such officer. The attorney-general, county attorney or any citizen of the county where such nuisance exists or is kept and maintained may maintain an action in the name of the state to abate and perpetually enjoin the same. The injunction may be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of an injunction granted in such proceeding shall be punished for contempt, and on conviction by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months. In case judgment is rendered in favor of the plaintiff in any action brought under this section, the court rendering the same shall also render judgment for a reasonable attorney's fee in

such action in favor of said plaintiff and against the defendants therein, which attorney's fees shall be taxed and collected as other costs therein, and, when collected, pay to the attorney or attorneys for the plaintiff therein." ¹

This statute makes a short seller, who bases his prices upon telegraphic or telephonic market reports and quotations, a criminal. It also makes one who deals, *i. e.*, buys and sells, and who bases his prices upon telegraphic or telephonic reports and quotations, intending when he sells, to buy before the time for delivery arrives or to avoid delivery in any of the methods well known to speculators who operate on or through a member of an exchange, a criminal. All distinction between a bucket-shop and a board of trade, as well as between a gambler on prices and a speculator, is ignored; and the statute, if enforced, would eliminate bucket shops and would also prevent almost all future delivery speculation in exchanges and boards of trade in that state. The explanation of the fact that bucket shops and boards of trade are coupled together in this statute, is that bucket shops, among their other pretensions, some times call themselves boards of trade; and, in places where there are no boards of trade, the real distinction between the things done in bucket shops and in boards of trade are more easily lost sight of.

THE LOUISIANA CONSTITUTIONAL PROVISIONS AGAINST DEALING AND GAMBLING IN FUTURES.—“The pernicious practice of dealing or gambling in futures on agricultural products or articles of necessity, where the intention of the parties is not to make an honest and *bona fide* delivery, is declared to be against public policy; and the legislature shall pass laws to suppress it.”²

“It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purpose

¹ General Statutes of Kansas, Sec. 2447, 2448, 2449, 2450.

² Constitution of Louisiana, Art. 189.

of forcing up or down the price of any agricultural product or article of necessity, for speculative purposes; and the legislature shall pass laws to suppress it.”¹

THE LOUISIANA STATUTE AGAINST DEALING AND GAMBLING IN FUTURES.—“It shall be unlawful for any person to deal or gamble in futures on agricultural products or articles of necessity, where the intention of the parties is not to make an honest and *bona fide* delivery of the said agricultural products or articles of necessity.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the parish jail for not less than one month nor more than six months, or both, at the discretion of the court.”²

There must have been a widespread and deep prejudice in the minds of the people of this state to have induced them to embody in their constitution a provision so hostile to speculation and make it synonymous with gambling on prices. This is the more remarkable because there is in New Orleans one of the largest cotton exchanges in the world, in which a large speculative business for future delivery is done. The words “dealing” and “gambling” have entirely different meanings. To deal is to buy and sell; and to deal in futures is to buy and sell for future delivery, in which the obligation to make and receive delivery must exist, although actual delivery need not be made, or even intended, as has already been shown. Speculation of this character, however, is prohibited by the Louisiana Constitution and the statute founded upon it, and, under them, there can be no practical distinction made between such speculation and gambling in prices.

THE MASSACHUSETTS STATUTE AGAINST SHORT SALES OF BONDS AND STOCK.—“Every contract, written or oral,

¹ Constitution of Louisiana, Art. 190.

² I Revised Laws of Louisiana (1904), 406.

for the sale or transfer of a certificate or other evidence of debt due from the United States or from an individual state, or of stock or a share or interest in the stock of a bank, company, city or village, incorporated under a law of the United States or of an individual state, shall be void, unless the party contracting to sell or transfer the same is, at the time of making the contract, the owner or assignee thereof, or authorized by the owner or assignee or his agent to sell or transfer the certificate or other evidence of debt, share or interest so contracted for.”¹

THE MASSACHUSETTS STATUTE AGAINST SPECULATION OR WAGERING CONTRACTS IN SECURITIES AND COMMODITIES. —“Section 4. Whoever upon credit or upon margin contracts to buy or sell, or employs another to buy or sell for his account, any securities or commodities, intending at the time that there shall be no actual purchase or sale, may sue for and recover in an action of contract from the other party to the contract, or from the person so employed, any payment made, or the value of anything delivered, on account thereof, if such other party to the contract or person so employed had reasonable cause to believe that said intention existed; but no person shall have a right of action under the provisions of this section if, for his account, such other party to the contract or the person so employed makes, in accordance with the terms of the contract or employment, personally or by agent, an actual purchase or sale of said securities or commodities, or a valid contract therefor.

SECTION 5. If, in a case under the provisions of the preceding section, the money or property paid or delivered has been stolen, embezzled or fraudulently or wrongfully used by the party entitled under the provisions of said section to sue therefor, the person to whom it right-

¹ I Revised Laws of Massachusetts, 655.

fully belongs may recover it in an action of contract in his own name.

SECTION 6. In a proceeding under the provisions of the two preceding sections, the fact that the seller or the person employing another to sell for his account did not own the securities or commodities at the time of the contract of sale or at the time of the giving of the order to sell, and the fact that settlements were made without the completion of the purchase or sale of the securities or commodities bought or sold or ordered to be bought or sold, shall each be prima facie evidence that within the meaning of section 4 there was an intention that there should be no actual purchase or sale, and that there was reasonable cause to believe that said intention existed; and the parties liable to an action under the provisions of said section shall be jointly and severally liable.

SECTION 7. In the three preceding sections, the word "securities" shall include all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation, joint stock company or association, bonds, coupons, scrip, rights, choses in action and other evidence of debt or property and options for the purchase or sale thereof; and the word "commodities" shall include everything movable that is bought or sold."¹

The peculiarity of this statute is that it limits its application to short sales of bonds and stock, and does not, like the Georgia statute, require that both parties know that the seller is short. Is there any legal or moral reason why a person, who is the purchaser of bonds or stock, be denied his remedy at law in case the seller breaks his agreement, simply because the seller did not, at the time of the sale, own the bonds or stock sold, or was not authorized by the owner to sell them? If the purchaser knew that the seller was short, there would be some fairness in leaving them both without a legal remedy. Every sale requires two parties and it cannot logically or fairly

¹ Revised Laws of Massachusetts, 834.

be made void as to one, who was ignorant of the fact which made it so.

The recent change in the statute of this state furnishes an apt illustration of the point desired to be made. The original statute was passed in 1890, and is to be found in the supplement to the Public Statutes of Massachusetts as Chapter 437, and was entitled "An act relative to wagering contracts in securities and commodities," but, in the Revised Laws of Massachusetts, which went into effect on January 1st, 1902, the statute of 1890, somewhat altered, was put into the chapter on gambling, wherein section two of the statute of 1890 became section 4. The section as it stood in 1890 was as follows. "Sec. 2. Whoever contracts to buy or sell upon credit or upon margin any securities or commodities, having at the time of contract no intention to perform the same by the actual receipt or delivery of the securities or commodities, and payment of the price, or whoever employs another so to buy and sell on his behalf may sue for and recover in an action of contract from the other party to the contract, or from the person so employed, any payment made or the value of anything delivered: Provided, such other party or other persons so employed had reasonable cause to believe that no intention to actually perform existed." Contrasting the two sections, we have an illustration of a confusion of words and ideas in one and a substantially correct description of the thing designed to be prohibited in the other; and, if section six had been omitted from the present statute, there would be no reason for criticism. That section is, however, open to criticism from the speculator's standpoint, and is in his view extremely illogical. The fact that the seller, or the person employing another to sell in his behalf, did not own the securities or commodities at the time of the contract of sale, or at the time of the giving of the order to sell, makes the condition of the seller that of being "short." This condition cannot mean there was not "actual sale;" on the contrary, the proposition is that there was a sale, and the obligation to deliver must exist. In such a case, the seller expects to buy or borrow the securities or commodities sold when or before the time of delivery arrives and then make delivery on the sale. Is it not, in such cases, absurd to say that there could be an intention that there should be no actual pur-

chase or sale, or that the fact of being short shall be *prima facie* evidence of such an intention? What is meant by the provision that "the fact that settlements were made without the completion of the purchase or sale of the securities or commodities bought or sold or ordered to be bought or sold," is extremely uncertain; but it is a contradiction of terms to say that because a contract of purchase or sale had been settled, there was "an intention that there should be no actual purchase or sale." This provision illustrates the impossibility of talking in the language of real purchases and sales and intending to talk about pretended purchases and sales. If the purchases and sales were real, they could be settled, and, to show that they were settled, is to show that they were real. You cannot settle pretended contracts, and "where one buys or sells intending at the time that there should be no actual purchase or sale," there is only a pretended buying or selling, which is gambling in prices. ("Dewey on Contracts for Future Delivery," 28 and 29.)

THE MISSISSIPPI CIVIL STATUTE AGAINST FUTURES.—
 "A contract for the purchase and sale of a commodity of any kind, to be delivered at a future day, the parties not intending that the commodity is to be actually delivered in kind and the price paid, shall not be enforced by any court; nor shall any contract of the kind commonly called "futures" be enforced, nor shall a contract in this section mentioned be a valid consideration, in whole or in part, for any promise or undertaking."¹

THE MISSISSIPPI CRIMINAL STATUTE AGAINST DEALING IN FUTURES.—"If any person shall deal in contracts commonly called "futures," or shall, by himself or his agent, directly or indirectly buy or sell any "future" contract, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned in the county jail not more than three months. If any person shall buy or sell commodities of any kind, to

¹ Annotated Code of Mississippi, 2117.

be delivered at a future day, without agreeing or intending that the commodities are to be actually delivered in kind, and the price paid, he shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in the last section.”¹

THE MISSISSIPPI MEMORIAL TO CONGRESS TO PROHIBIT “FUTURE DEALING.”—Whereas, The People of the State of Mississippi are engaged chiefly in agricultural pursuits and are dependent for sustenance and support upon the products of the farm; And Whereas, There has grown up in the large cities of the United States a pernicious and immoral system of gambling in these products, thereby defeating the law of supply and demand in fixing the price of said products, much to the injury of the producer; therefore be it

Resolved by the Senate, the House concurring, That the Congress of the United States is hereby respectfully memorialized and requested to enact a law or laws abolishing what is known as “future dealing,” and the members of Congress from Mississippi are earnestly requested to use their efforts to have such a law enacted.”²

The Mississippi Civil Statute by its terms clearly prohibits ordinary speculation by means of contracts for future delivery. The only effect, however, which this statute has, is to withhold the aid of the courts in enforcing the contracts themselves or any promise or undertaking for which they are a consideration. The Mississippi Criminal Statute, however, makes the ordinary speculator by means of contracts for future delivery a criminal. The expressions “deal in contracts commonly called futures” and “buy or sell any future contract” is confusing, because no one deals in contracts or buys or sells contracts, although, in the bucket shop talk, and, even on the exchanges, they often speak in those terms, meaning,

¹ Annotated Code of Mississippi, 1120 and 1121.

² Laws of Mississippi, 1898, Chap. 128.

on an exchange, that they make contracts for future delivery, and, in a bucket shop, that they pretend to make contracts for future delivery. The only speculative contracts which one can really buy or sell are "puts" and "calls" or a combination of them called "straddles." The memorial of the Legislature of Mississippi is reproduced here to show how intense is the feeling in that State in opposition to speculation by means of contracts for future delivery. Congress has never acted on that memorial, although it has had under consideration the matter of prohibiting or regulating trading of that character, the history of which is interesting but not within the scope of this work.

THE MISSOURI STATUTE AGAINST OPTIONS, MARGINAL PURCHASES OR SALES AND BUCKET-SHOPS.—"Sec. 2337.—All purchases and sales or pretended purchases and sales, or contracts and agreements for the purchase and sale, of the shares of stocks or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margin or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, and all the buying or selling or pretended buying or selling of such property on margins or on optional delivery, when the party selling the same, or offering to sell the same, does not intend to have the full amount of the property on hand or under his control to deliver upon such sale, or when the party buying any of such property or offering to buy the same does not intend actually to receive the full amount of the same if purchased, are hereby declared to be gambling and unlawful, and the same are hereby prohibited. Any company, co-partnership or corporation, or member, officer or agent thereof, or any person found guilty of a violation of the provisions of this section, shall be fined in a sum not less than three hundred dollars nor more than three thousand dollars.

SEC. 2338.—It shall not be necessary, in order to commit the offense defined in the preceding section, that

both the buyer and the seller shall agree to do any of the acts above prohibited, but the said offense shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person, or agent thereof, who shall communicate, receive, exhibit or display in any manner any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall, for each such offense, be deemed and held to be an accessory thereto, and, upon conviction thereof, shall be fined the same as the principal; and any such corporation, association, copartnership or person or agent permitting any such communication, reception, exhibit or display shall, for every such offense, be fined a sum not less than three hundred nor more than two thousand dollars.

SEC. 2339.—It shall be unlawful for any corporation, association, co-partnership or person, to keep or cause to be kept in this state, any office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, or wherein is conducted or permitted the pretended buying or selling of such property on margins, when the party selling the same, or offering to sell the same, does not intend to have the full amount of property on hand or under his control to deliver upon such sale, or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited; and

any person, company, co-partnership or corporation, or officer or agent thereof, that shall be guilty of violating this section, shall, upon conviction thereof, be fined in a sum not less than five hundred dollars nor more than five thousand dollars.

SEC. 2340.—It shall be the duty of every commission merchant, co-partnership, association, corporation or broker doing business as such to furnish every customer or principal for whom such commission merchant, broker, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom any such property was bought or to whom it shall have been sold, as the case may be, the time when, the place where and the price at which the same was either bought or sold; and in case such commission merchant, broker, co-partnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, such refusal may be given in evidence as a circumstance tending to show that such property was sold or bought in violation of the provisions of section 2337.

SEC. 2341.—Whoever knowingly permits any of the gambling acts aforesaid in his or their building, house, or in any out-house, booth, arbor or erection of which he or they have the care and possession, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars for each and every offense; and any penalty so adjudged shall be a lien upon premises on or in which such unlawful acts are carried on or permitted.

SEC. 2342.—All contracts made in violation of sections 2337, 2338, 2339 and 2341 of this article shall be considered gambling contracts and shall be void.

SEC. 2343.—The judge of the court having criminal jurisdiction for the county or city shall give the provisions of sections 2337, 2338, 2339, 2340 and 2341 of this

article in special charge to the grand jury at each term of such court, and shall instruct such jury to inquire into any violation of the last named sections of this article.

SEC. 2344.—It shall be the duty of the prosecuting attorneys, in their respective jurisdictions, and the attorney-general, to enforce the provisions of this article, and the proceedings may be either by information or indictment; and any prosecuting attorney or the attorney-general securing a conviction under the provisions of sections 2337, 1338, 2339, 2340 and 2341 of this article shall be entitled, in addition to his ordinary fee or salary, to one-fourth of the fine recovered.

SEC. 2345.—Upon the trial of any charge or indictment against any corporation, company, firm, association or individual for a violation of sections 2337, 2338, 2339, 2340 and 2341, or either of them, of this article, all officers, agents and employees of such corporation, company, firm, or association, or individual, shall be competent witnesses against the defendant on trial; any such officer, agent and employee may be compelled to testify against such defendant, and produce all books and papers in his custody or under his control pertinent to the issue in such trial, and he shall be compelled to answer all questions propounded to him relevant to the issue in such trial.”¹

This statute prohibits speculation on exchanges by means of real purchases and sales as well as gambling in bucket-shops by means of pretended ones, and the test of whether a case comes within it, would be to enquire whether the seller intended actually to deliver and the purchaser intended actually to receive the stock or commodity really dealt in or pretended to be dealt in. Where the dealing was merely pretended, the parties would be gambling, and of course would not intend to make or receive delivery, but it is the fact that the dealing was pretended that makes them gamblers and not the fact that they did not intend to make or receive delivery. The spec-

¹ Revised Statutes of Missouri.

ulator, whether he be a member of an exchange or a customer of a member, rarely ever intends actually to make or receive delivery; not because the obligation to do so does not exist, but because he knows how to avoid actual delivery by doing things which are theoretically equivalent to it. As between the member of an exchange and his customer, they settle by payment of the differences between the prices of purchases and sales; and, as between the buyer and seller on the exchange, whether one or both are dealing for themselves or for a customer, they expect to, and in fact do, settle with each other the great majority of the contracts made by payment of differences in prices by means of "direct settlements," "ring settlements" or "clearing house settlements." We cannot now discuss these methods of doing business; but they are, as between the parties to them, perfectly legal, and are so well known as a means of avoiding actual delivery that no experienced speculator could truthfully say, except in rare cases, that he intended to make actual delivery, and so in Missouri he must go to jail. The statute, if enforced, would eliminate bucket-shops and would also prevent almost all future delivery speculative business on every exchange and board of trade in the state.

NEW YORK STATUTE AGAINST SHORT SALES BY OFFICERS OF CORPORATIONS.—"An officer or director of a stock corporation who sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share, is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars or both."¹

THE NORTH CAROLINA STATUTE TO SUPPRESS AND PREVENT FUTURES.—"Every contract, whether in writing or not, whereby any person or persons, corporation or corporations shall agree to sell and deliver any cotton, indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt, pork, salt fish, beef cattle, sugar, coffee, stocks, bonds, and

¹ Penal Code, Sec. 610.

chooses in action, at a place or places and at a time or times specified and agreed upon therein, to any other person or persons, corporation or corporations, whether the person to whom such article is so agreed to be sold or delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered; and every contract commonly called 'futures' as to the several articles and things hereinbefore specified, or any of them, by whatever other name, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void and of no effect in law or equity; and no action shall be maintained in any court in this State to enforce any such contract, whether the same was made in or out of the State, or partly in and partly out of this State, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately, nor shall any party to any such contract, or

any agent or agents of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency.

When the defendant or defendants in any action pending in any court in this state shall allege specifically in his or their answer that the cause of action alleged in the complaint is in fact founded upon a contract such as is by this act made void, and such answer shall be verified, then, and in that case, the burden shall be upon the plaintiff in such action to prove by the proper evidence, other than any written evidence thereof, that the contract sued upon is a lawful one in its nature and purposes; that the defendant may likewise produce evidence to prove the contrary: Provided, nevertheless, that any allegation or statement of fact made in any pleading in any such action, or the evidence produced on the trial in any such action, shall not be evidence against the party making or producing the same in any criminal action against such party.

Every person who shall become a party to any such contract as is by this act made void, and every person who shall be the agent, directly or indirectly, of any such party in making or furthering or affectuating the same; and every agent or officer of any corporation who shall, in any way or manner, knowingly aid in making or furthering any such contract to which such corporation shall be a party, shall be deemed guilty of a misdemeanor, and on conviction in the superior court shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the discretion of the court.

Every person who shall, while in this State, consent to become a party to any such contract made in another state, and every person who shall, as agent of any per-

son or corporation who shall become a party to any such contract made in another State, in this State do any act, or in any way aid in this State in the making or furthering such contract so made in another State, shall be deemed guilty of a misdemeanor, and on conviction in the superior court shall be fined not less than fifty nor more than two hundred dollars, and may be imprisoned in the discretion of the court.”¹

THE NORTH CAROLINA STATUTE PROHIBITING DEALING IN FUTURES IN THE TOWN OF REIDSVILLE.—“It shall be unlawful for any person, firm, co-partnership or corporation, or any agent of such person, firm, co-partnership or corporation, to conduct within the corporate limits of the towns of Reidsville, in Rockingham county, any bucketshop, or within said limits to deal in, or sell, any contracts on margins for future delivery of any stocks, grain, cotton, tobacco, meat, bacon, iron, steel, or other commodity where the article sold or agreed to be sold is not delivered to the purchaser, as the consideration for the price agreed to be paid, within a reasonable time after the said contract is entered into.

Anyone violating the provisions of this act shall for each offense be imprisoned not more than ten days or fined not more than fifty dollars, each day's, or part of a day's, conduct of the business herein prohibited to constitute a separate offence.

This act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this 11th day of February, A. D. 1903.”²

We find in the first of these statutes a good description of a gambling contract in one of the forms of trade, to wit: a contract in the form of a sale and a mutual co-

¹ This is entitled “An Act to suppress and prevent certain kinds of vicious contracts;” Laws of North Carolina, 1889, Chap. 221, p. 233.

² This is entitled “An Act to prohibit dealing in futures in the town of Reidsville, Rockingham County,” Public Laws of North Carolina 1903, Chap. 105.

temporaneous understanding that the contract is not to be enforced, that no delivery is to be made, and that the transaction is to be settled by the payment of the difference between the price mentioned in the contract and the market price at a specified future time. In such a case the form of dealing is a mere pretense and is prohibited by the statute. (See "Dewey on Contracts for Future Delivery," p. 28.) This statute would belong in Chapter II but for the fact that contracts "commonly called 'futures'" are also brought within its prohibition, which makes it also a statute against speculation, because these contracts, as we have already seen, are not gambling contracts. In another statute of this State (see Chapter III) it is provided that a license tax be imposed on a person for doing precisely the same things that are prohibited by the first statute. By the Reidsville statute a person who buys or sells on margins for future delivery within the corporate limits of the town of Reidsville must go to jail, if the article sold or agreed to be sold is not actually delivered within a reasonable time after the contract is entered into. It is absurd, yet it is fair to say that, under one of these statutes, a person may be licensed to do a business, which, under another, he must go to jail for doing; and that if he happens to buy or sell on margins for future delivery within the corporate limits of the town of Reidsville, he must go to jail if, for any reason, actual delivery is not made within a reasonable time after the contract is entered into.

THE OHIO STATUTE AGAINST OPTIONS, FORESTALLING AND CORNERS.—"Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain or other commodity, stock of any railroad or other company, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than twenty, nor more than five hundred dollars, or confined in the county jail not exceeding six months, or both; and all contracts made in violation of this section, shall be considered gambling contracts, and shall be void; provided, that the provisions of this law shall

only be held to mean and apply to such contracts, where the intent of the parties thereto is that there shall not be a delivery of the commodities sold but only a payment of differences by the parties losing upon the rise or fall of the market.”¹

This statute was modeled after the Illinois statute and, except for the proviso, is substantially the same. The proviso, however, nullifies the entire statute. The object of the legislature was to prohibit dealing in options, forestalling the market and corners, in the same manner as provided in the Illinois statute; but the provision that it shall only apply to contracts “where the intent of the parties thereto is that there shall not be a delivery of the commodities sold, but only the payment of differences by the parties losing upon the rise or fall of the market,” excludes its application to the very things intended to be prohibited, and so makes the statute meaningless. A little reflection as to the nature of options, forestalling and corners will demonstrate this. In an option there never can be an intention that there shall or shall not be a delivery of the commodity which is the subject of the option; if such an intention existed, then there would be no option. So, where one forestalls the market, he must make actual contracts of purchase involving actual delivery; and where one attempts to corner the market he must make real contracts of purchase, in which delivery may be enforced, or he could not succeed. The body of this statute is directed against speculation, but the proviso limits its application to gambling on prices, a result due to the confusion of ideas as to, or more strictly speaking to a failure to discriminate between, speculation and gambling in the forms of trade.

THE OHIO STATUTE AGAINST GAMBLING, BUCKET SHOPS, SPECULATION AND CORNERS.—“It shall be unlawful for any corporation, association, chamber of commerce, board of trade, co-partnership or person to keep or cause to be kept within this state any bucket-shop, office or other place wherein is conducted or permitted the

¹ 3 Annotated Ohio Statutes, 3349.

pretended buying or selling of the shares of stock or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins, or when the party buying any of such property, or offering to buy the same does not intend actually to receive the same if purchased, or to deliver the same if sold, and the keeping of all such places and any such pretended buying or selling are hereby prohibited. Any corporation or person, whether acting individually or as a member, or as an officer, agent or employee of any corporation, association or co-partnership, who shall be guilty of violating this section shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, nor less than two hundred dollars, and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above prescribed, shall upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter; and the continuance of such establishment after first conviction shall be deemed a second offense. And the foregoing provisions shall apply to any 'bucket-shop,' office or other place of business within this state, conducted in pursuance of or under any agreement or arrangement with any corporation, chamber of commerce, board of trade, association, co-partnership, or person without this state, who has or may have leased, or who has or may have the control or use of any line or wire of any telegraph, or other means of communication with such 'bucket-shop,' office or other place of business within this state, and to all persons in any way employed or engaged in maintaining and carrying on such wagering business therein, or in connection therewith; and no

person within this state shall employ or use such telegraph, or other means of communication to transmit information to such non-resident of this state of any such wagering transaction or thing prohibited by this act, and the keeping of all places hereinbefore mentioned is hereby prohibited, and such non-residents of this state, as shall cause to be violated within this state the foregoing provisions in relation to such non-residents, shall be deemed guilty of a misdemeanor committed within this state, and shall be fined or imprisoned as hereinbefore provided in this section.

It shall not be necessary, in order to commit the offense defined in section one of this act, that both the buyer and seller shall agree to do any of the acts therein prohibited, but the said offense shall be complete against any corporation, chamber of commerce, board of trade, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership, or person who shall communicate, receive, exhibit or display in any manner any such offer to so buy or sell, or any statements or quotations of the prices of any such property, with a view to any transaction as aforesaid shall be deemed a principal, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in section one of this act.

It shall be the duty of every commission merchant, co-partnership, association, corporation or broker doing business as such to furnish, upon demand, to any customer or principal for whom such commission merchant, broker, co-partnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom it shall have been sold, as the case may be, the time when, the place where and the

price at which the same was either bought or sold; and in case such commission merchant, broker, co-partnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be *prima facie* evidence that such property was not sold or bought in a legitimate manner.

The term 'bucket-shop' shall apply to all and every of the places mentioned in this act, and shall include not only the place of the making or permission to make, or offer to make wagering contracts as aforesaid, but also the place wherein is carried on the system of purchasing or selling of stocks, bonds or securities as mentioned in section one of this act, whether the contract is to be performed within or without this state, when the payment therefor is by certified check, or any other device, given or made by or for the purchaser to the seller, and the delivery is by or for the seller to the purchaser, and such seller or party acting for him does not in good faith receive the cash upon such certified check or method of payment as is done in the regular course of legitimate business, or any such purchaser or party acting for him does not in like manner receive such stock, bonds or other securities. And the word 'margin' in this act shall be held to mean and include not only sums of money paid or to be paid upon executory wagering contracts, but also money paid or agreed, or required to be paid, upon executory contracts which the party paying or to pay the same does not intend to complete by receiving or delivering the whole of what is so contracted for, but to re-sell, before the time fixed by contract for such delivery or at such time, to pay or receive the difference between the contract price and the market price of that concerning which such contract is made. And any attempt to produce a corner on any commodity, or article of merchandise by contracts or wagers, intended to produce an abnormal condition, shall be deemed a violation of this act.

Whoever knowingly permits any of the illegal acts aforesaid in his building, house, or in any out-house, booth, arbor or any erection of which he has the care or possession, shall be fined not less than five hundred dollars nor more than one thousand dollars, and any penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted, and it shall be the duty under this act of all judges of the common pleas courts in this state, at every regular term thereof, to charge all regularly impaneled grand juries to diligently inquire, investigate and true presentment make of all persons guilty of a violation of any of the provisions of this act.”¹

The words “or when the party buying any of such property, or offering to buy the same does not intend actually to receive the same if purchased, or to deliver the same if sold” in the first section, makes this statute one against speculation, because that state of mind makes the keeper of a place wherein the ordinary speculator, who operates therein by means of contracts for future delivery, as well as the operator himself, criminals. Such a speculator could not, except in rare cases, truthfully say that he intended actually to make or receive delivery of the commodities dealt in. He knows that he may have to make or receive delivery, but he expects to arrange his contracts, or have them arranged for him, so that he will not have to do so. The rules of most of the exchanges are made so as to make actual delivery unnecessary, and in some of them it is almost impossible to make actual delivery. The definition of the words “margin” in the fourth section of this statute clearly shows that speculation as well as gambling is prohibited. The words “and any attempt to produce a corner on any commodity, or article of merchandise by contracts or wagers, intended to produce an abnormal condition, shall be deemed a violation of this act” also apply to speculation and not to gambling, because real contracts are required to make a corner, it being impossible to make one by means of pretended contracts.

¹ III Annotated Ohio Statutes, pages 3350, 3351.

THE SOUTH CAROLINA STATUTE AGAINST SHORT SALES AND CONTRACTS OF SALE FOR FUTURE DELIVERY.—“Every contract, bargain or agreement, whether verbal or in writing, for the sale or transfer at any future time of a certificate, bond or other evidence of debt, due from the United States or from an individual state, or of stock or a share of interest in the stock, or of the bonds of any bank, city, town, village or incorporation of any kind whatsoever incorporated under any law of the United States or of any individual state, or for the sale or transfer at any future time of any cotton, grain, meats, or any other animal, mineral or vegetable product of any and every kind, shall be void unless the party contracting, bargaining or agreeing to sell or transfer the same is at the time of making such contract, bargain or agreement the owner or assignee thereof, or is at the time authorized by the owner or assignee thereof or his duly authorized agent to make and enter into such contract, bargain or agreement for the sale or transfer of such certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable products so contracted for, or unless it is the *bona fide* intention of both of the parties to the said contract, bargain or agreement, at the time of making the same, that the said certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable products so agreed to be sold or transferred shall be actually delivered in kind by the party contracting to sell and deliver the same, and shall be actually received in kind by the party contracting to receive the same at the period in the future mentioned and specified in the said contract, bargain or agreement for the transfer and delivery of the same.

In any and all actions brought in any court to enforce such contracts, bargains or agreements, or to collect any note or other evidence of indebtedness, or any claim or demand whatever, founded upon any such contract, bargain or agreement, the burden of proof shall be upon

the plaintiff to establish that at the time of making such contract, bargain or agreement the party making the same was the owner or assignee of the certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable product so agreed to be sold and transferred, or was at the time authorized by the owner or assignee thereof, or his duly authorized agent, to make and enter into such contract, bargain or agreement, or that at the time of making such contract, bargain or agreement it was the bona fide intention of both parties thereto that the said certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable product so agreed to be sold and transferred should be actually delivered and received in kind by the said parties at the future period mentioned therein.

Any person or persons so contracting, bargaining or agreeing for the sale or transfer of any of the aforesaid commodities in violation of the provisions of this Chapter who shall pay over to any one or more person or persons any sum or sums of money for and on account of a loss sustained by reason of such contract, bargain or agreement shall be at liberty, within three months next ensuing after such payment, to sue and recover the amount so lost and paid, or any part thereof, from the person or persons to whom he or they shall have paid the same, with costs of suit, by action, to be prosecuted in any court of competent jurisdiction, and the oath of the loser that he has actually paid over the money to the party against whom the action is brought shall be regarded as prima facie establishing the case against such party; and any person who shall act as agent or middleman in the making or execution of any such contract, or who shall accept or receive and forward any moneys, drafts or bills of exchange in furtherance thereof, shall be held liable in an action by the party to recover the amount of value of the money so received, or the value of the draft or bill of exchange so accepted or forwarded.

Any person or persons who by virtue of the provisions herein contained, shall or may be liable to be sued for the said moneys so paid to him or them shall be obliged and compelled to answer upon oath such order or orders as shall be made against him or them for discovering the sum and sums of money so paid to him or them as aforesaid.

All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatever, given granted or entered into or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money lost by reason of any contract entered into in violation of the provisions of this Article shall be utterly void, frustrate and of non-effect, to all intents and purposes whatsoever.”¹

This statute makes contracts of sale for future delivery void unless, at the time the contracts are made, the seller owns or is the agent of the owner of things sold, and unless an intention is actually shown to exist on the part of both buyer and seller to make and receive delivery in kind of the things sold. The fact that there is a purchaser as well as a seller to every contract of sale is recognized, but that the effect of the statute on them would be different seems to have been lost sight of. This statute compels a purchaser for future delivery to purchase at the peril of being met at the trial for a breach of the contract by the seller with a rule of evidence requiring him affirmatively to show what the condition and intention of the seller at the time of sale was. The fact that the seller was short, or that his intention was to avoid delivery in kind in some of the ways well known to speculators, might be solely within his own knowledge, and why should the right of the plaintiff depend on an undisclosed condition, or an undisclosed intention, of the seller at the time of the sale?

¹ Code of Laws of South Carolina, sec. 2310, 2311, 2312, 2313 and 2314.

THE TENNESSEE STATUTE AGAINST CONTRACTS FOR FUTURE DELIVERY. "3166. Any sale, contract, or agreement for the sale of bonds, stocks, grain, cotton, or other produce, property, commodity, article or thing, for future delivery, where either of the contracting parties, buyer or seller, is dealing simply for the margin, or on the prospective rise or fall in the price of the article or thing sold, and where either of the said contracting parties have had no intention or purpose of making actual delivery or receiving the property or thing in specie, shall be deemed, and is hereby declared, gaming.

3167. Any sale of any property or thing, or any contract or agreement for such sale, for future delivery, whereby the purchaser is, by the contract or agreement, inhibited from paying whatever margins or part of the cost or value of the article, property commodity, or thing purchased, as the said purchaser may see proper, or which inhibits the purchaser from paying and keeping his margins good, or which inhibits the purchaser from making, realizing, or receiving more than a certain stipulated gain or profit by said sale or purchase, shall be deemed void, and the same is hereby declared gaming.

3168. If any person shall buy or sell, or contract for the purchase or sale of any property or thing enumerated in section 3166, and in violation of any of the provisions of sections 3166 and 3167, he shall be guilty of a misdemeanor, and, upon conviction thereof, for every such violation, shall be punished as provided by law for the punishment of gaming; but he shall not be fined less than twenty-five dollars nor more than two hundred and fifty dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned within these limits.

3169. In all prosecutions under sections 3166-3170, no prosecutor shall be required, and it is sufficient to charge that the defendant did game or wager or deal in futures, without setting forth with whom he dealt, but

the indictment or presentment shall charge a violation of some of the provisions of said sections 3166-3170, inclusive, either in terms or substance.

3170. The circuit and criminal court judges of the state shall give said sections 3166-3170, inclusive, in charge to the grand juries, and it shall be the duty of said grand juries to present, or, at the instance of the attorney-general, to indict all persons violating any of the provisions of sections 3166-3170, and for this purpose the grand jury are clothed with inquisitorial powers, as provided in section 5912.”¹

It has generally been held that in order to make a contract to sell a gambling transaction it must appear that both parties concurred in the intention that no delivery of the property sold is to be made. (Dewey on Contracts for Future Delivery, p. 50); but this statute expressly provides that such an intention need exist in the mind of only one of the parties in order to make the contract unlawful as to both.

In strange contrast with this statute we find a statute of the same State (Chapter III) authorizing the City of Memphis to tax parties engaged in the same kind of business which is prohibited by the general statute.

THE TEXAS STATUTE AGAINST DEALING IN FUTURES.—
 “If any person shall, directly or through an agent or agents, manage or superintend for himself, or shall as agent or representative of any other person, firm or corporation, conduct, carry on or transact any business which is commonly known as dealing in futures, in cotton, grain, lard, any kinds of meats or agricultural products, or corporation stocks, or shall keep any house, or manage, conduct, carry on or transact any business commonly known as a produce or stock exchange, or bucket-shop, where future contracts are bought and sold with no intention of an actual *bona fide* delivery of the article or thing so bought or sold, such person, whether acting

¹ Code of Tennessee.

for himself or for another, as aforesaid, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not less than one hundred nor more than five hundred dollars, and in addition thereto shall be imprisoned in the county jail not less than thirty days nor more than six months; provided, that each day that such business or house is carried on or kept shall constitute a separate offense.

Whoever knowingly permits any such business to be carried on in his building, house, booth, arbor or erection of which he is the owner, or has the possession, care, management or renting, shall be guilty of a misdemeanor, and on conviction fined in any sum not less than one hundred dollars nor more than five hundred dollars. Each day he also permits shall constitute a separate offense.”¹

This statute makes every one who, directly or indirectly either as principal or agent, buys or sells for future delivery without an intention to receive or make actual delivery, or who keeps a place or permits a place to be kept where that is done, a criminal. The test of whether a transaction comes within the statute is to enquire if actual delivery of the commodity dealt in is intended; and, as such an intention seldom exists in the mind of the speculator, his dealing is practically prohibited. Stock exchanges, produce exchanges and bucket-shops, without discrimination, are linked together as prohibited places, and the statute is as fatal to speculation on the exchanges as to gambling in bucket-shops. (See remarks on statute of Missouri.)

¹ Penal Code of Texas, Art. 377 and 378.

CHAPTER II.

STATUTES AGAINST GAMBLING IN THE FORMS OF TRADE, INCLUDING BUCKET SHOPS AND BUCKET-SHOPPING.¹

THE COLORADO STATUTE TO PREVENT CHILDREN FROM FREQUENTING BUCKET SHOPS.—In a chapter of the Colorado statutes relating to children, the words “delinquent child” is defined to include a child of 16 years of age, “who patronizes or visits any public pool room or bucket shop.”²

THE CONNECTICUT STATUTE RELATING TO BUCKET SHOP BUSINESS.—“The court of common council of any city, and the warden, burgesses and freemen of any borough, and the inhabitants of any town in legal town meeting assembled, shall have power to make, alter, and repeal ordinances or by-laws to suppress and punish all kinds of gambling and gaming, pool selling, policy dealing, lot-

¹ This chapter contains statutes which are mainly against bucket shops and bucket shopping. It should be observed, however, that the words “or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold,” appearing in the first sections of the statutes of Michigan, Illinois and Vermont and in the third section of the statute of Missouri bring these statutes also within the category of statutes against speculation, because the words quoted relate to speculation as well as to gambling in prices. They are placed in this chapter because their general scope is against bucket shops. Statutes against speculation will be found in Chapter I; though it should be borne in mind that several of them contain provisions against gambling in the forms of trade, bucket shops and bucket shopping, it being impossible to separate the two features.

² 3 Millis Annotated Statutes (Revised Supplement), 186.

tery dealing, bucket-shop business, and the staking or deposit of money or collaterals for the same on margins, or otherwise, against a rise or fall in the markets of the price of stocks, bonds, or merchandise, and to prevent idlers and persons without apparent employment from enticing persons into places where gambling of any kind is carried on.”¹

THE ILLINOIS STATUTE AGAINST BUCKET SHOPS AND BUCKET SHOPPING.—“It shall be unlawful for any corporation, association, copartnership or person to keep a cause to be kept within this state any bucket-shop, office, store or other place, wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any corporation or person, whether acting individually, or as a member, or as an officer, agent or employee of any corporation, association, or copartnership, who shall be guilty of violating this section, shall, upon conviction thereof, be fined in any sum not less than \$200 and not more than \$500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above prescribed, shall, upon conviction be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such estab-

¹ General Statutes of Connecticut, Sec. 1902.

ishment after first conviction shall be deemed a second offense.

It shall not be necessary, in order to commit the offense defined in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the said crime shall be complete against any corporation, association, copartnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, copartnership or person who shall communicate, receive, exhibit or display, in any manner, any such offer to so buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall be deemed an accessory, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in section one of this act.

It shall be the duty of every commission merchant, copartnership, association, corporation or broker doing business as such to furnish, upon demand, to any customer or principal for whom such commission merchant, broker, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought or to whom it shall have been sold, as the case may be, the time when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, copartnership, corporation, or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner.

Whoever knowingly permits any of the illegal acts aforesaid in his building, house, or in any out-house,

booth, arbor or erection of which he has the care or possession, shall be fined not less than \$500 nor more than \$1,000; and any penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted. It is the intention of this act to prevent, punish and prohibit, within this state, the business now engaged in and conducted in places commonly known and designated as bucket-shops, and also to include the practice now commonly known as bucket-shopping by persons, corporations, associations, or copartnerships, who ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, petroleum, stocks and bonds. And it shall be the duty, under this act, of all the judges of the several circuit courts in this state, and of the judges of the criminal courts of Cook County, at every regular term thereof to charge all regularly impanelled grand juries to make due investigation and report upon all violations of the provisions of this act.’¹

THE IOWA STATUTE AGAINST BUCKET-SHOPS.—“It shall be unlawful for any person, corporation, association or society to keep within the state any store, office or other place for the pretended buying or selling of grain, pork, lard, or any mercantile mining or agricultural products or corporation stocks, on margins, without any intention of future delivery, whether such pretended contracts are to be performed within or without the state; and no person, corporation, association or society within the state shall make or enter into any contract or pretended contract, such as is above stated and referred to; the intention of this section being to prevent and prohibit within the state the business now engaged in and conducted in places commonly known and designated as bucket-shops. But this section shall not apply to or in any way effect any contract for the actual buying or selling of any com-

¹ Revised Statutes of Illinois, 592.

modity whatever for present or future delivery, where the actual delivery or receipt of the thing sold is contemplated and in good faith intended by either of the parties to the contract.

Any person, whether acting individually, or as a member of any copartnership, corporation, association or society, guilty of violating any of the provisions of the preceding section, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in the county jail, not less than thirty days nor more than one year, or both."¹

THE MICHIGAN STATUTE AGAINST BUCKET-SHOPS, SHORT SALES AND TRANSACTIONS ON MARGINS OR FOR FUTURE OR OPTIONAL DELIVERY.—“Section 1. It shall be unlawful for any corporation, association, firm, copartnership or person to keep, or cause to be kept by any agent or employee, within the state, any office, store or other place, wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins, when the party selling the same or offering to sell the same does not have the property on hand to deliver upon such sale; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; all such acts, and all purchases and sales, or contracts and agreements for the purchase and sale of any of the property aforesaid in the manner aforesaid, and all offers to sell the same or to purchase the same in the manner aforesaid, as well as all transactions in stocks, bonds, petroleum, cotton, grains

¹ Code of Iowa, Sec. 4967, 4968.

and provisions in manner aforesaid, on margins for future or optional delivery, are hereby declared gambling, and criminal acts, whether the person buying or selling, or offering to buy or sell, acts for himself or as an agent, employee or broker for any firm, copartnership, company, corporation, association or broker's office.

SECTION 2. It shall be the duty of every commission merchant, firm, copartnership, association, corporation or broker doing business as such, to furnish upon demand, to any customer or principal for whom such commission merchant, broker, firm, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom any such property was bought or to whom it shall have been sold, as the case may be, the time when, the place where and the price at which the same was either bought or sold; and in case such commission merchant, broker, firm, copartnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner upon the open market.

SECTION 3. Any person who shall knowingly permit any of the acts set forth in section one of this act, in his building, house, or any out house, booth, arbor or erection of which he has the title, care or possession, shall be fined not to exceed the sum of one thousand dollars and costs of prosecution, and any penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted, and any person whether acting for himself, or as a broker, agent or employee of any person, or as an officer, broker, agent or employee of any corporation, association, firm or copartnership, who shall be guilty of violating any of the provisions of section one of this act, shall, upon conviction thereof, be fined in the sum not less than one hundred dollars nor more than

five hundred dollars and costs of prosecution; and if such person shall be guilty of a second offense under section one of this act, in addition to the penalty above prescribed, he shall, upon conviction thereof, be imprisoned in the county jail for the period of six months.”¹

THE MISSOURI STATUTE DEFINING AND PROHIBITING BUCKET-SHOPS.—“Whoever as principal, or as agent of any corporation or person or persons, shall set up and carry on a “bucket-shop,” shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five hundred dollars nor more than fifteen hundred dollars.

A bucket-shop, in the meaning of the preceding section, is a place wherein are posted and published, from information received as the same occur, the fluctuating prices of stocks, bonds, petroleum, cotton, grain, provisions or other commodities, or of any one or more of the same, in trades made or offered to be made on boards of exchange, or by any person, firm or organization, and wherein the person carrying on the bucket-shop, either as principal or agent, pretends to buy or sell, or goes through the form of buying or selling, then and there, to any other person or persons, any one of said commodities at a certain price fixed by or according to the aforesaid prices posted or published, but wherein neither party actually buys such commodity and neither party actually sells the same.

It shall be unlawful for any corporation, association, copartnership or person to keep or cause to be kept in this state any office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other commodities, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of delivering the property so sold; or wherein is con-

ducted or permitted the pretended buying or selling of such property on margins, when the party selling the same, or offering to sell the same does not have the property on hand to deliver upon such sale; or when the party buying any such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any person, whether acting individually or as a member or as an officer, agent or employee of any corporation, association or copartnership, who shall be guilty of violating this section, shall, upon conviction thereof, be fined in any sum not less than five hundred dollars, and not more than fifteen hundred dollars, and any person or persons who shall be guilty of a second offense under this section, in addition to the penalty above prescribed, shall, upon conviction, be imprisoned in the county jail for the period of not less than six months and not more than twelve months.

All purchases and sales or contracts and agreements for the purchase and sale of any of the property aforesaid, in the manner aforesaid, as well as all transactions in stocks, bonds, petroleum, cotton, grains and provisions in the manner aforesaid, on margins, for future or optional delivery, are hereby declared gambling and criminal acts, whether the person buying or selling, or offering to buy or sell, acts for himself or as agent or broker for any firm, company, corporation, association or broker's office; and any person who shall be guilty of violating this section, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each offense.

It shall not be necessary, in order to commit the offense defined in the preceding section, that both the buyer and seller shall agree to do any of the acts herein prohibited, but the said crime shall be complete against any corporation, association, co-partnership or person

thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall, for each such offense, be deemed and held to be an accessory thereto, and, upon conviction thereof, shall be fined the same as the principal; and any such corporation, association, copartnership or person permitting any such communication, reception, exhibit or display, shall, for every such offense, forfeit the sum of five hundred dollars, to be collected in a civil action instituted by the prosecuting attorney of the city or county wherein such offense occurs or is permitted to occur.

It shall be the duty of every commission merchant, copartnership, association, corporation or broker, doing business as such, to furnish to every customer or principal for whom such commission merchant, broker, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom any such property was bought, or to whom it shall have been sold, as the case may be, the time when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, copartnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner upon the open market; and for each such offense such offender shall be fined not less than five hundred dollars nor more than fifteen hundred dollars.

Whoever knowingly permits any of the gambling acts

aforesaid in his or their building, house or in any out-house, booth, arbor or erection of which he or they have the care and possession, shall be fined not less than five hundred dollars nor more than fifteen hundred dollars for each and every offense, and any penalty so adjudged shall be a lien upon premises on or in which such unlawful acts are carried on or permitted. It is the intention of this act to prevent and prohibit within this state any person, corporation, association or copartnership from dealing in, by either selling or purchasing, any stocks, bonds, article or commodity when an actual delivery is not contemplated, and each and every day the unlawful business prohibited by this act is carried on shall constitute a separate offense, and all contracts made in violation of this act shall be considered gambling contracts, and shall be void; all fines collected under the provisions of this act shall be paid to the state treasurer, and shall become a part of common school fund of this state. If default is made in the payment of any fine mentioned in this act, the person so defaulting shall be imprisoned in the county jail not less than six nor more than twelve months.’¹

THE NEW HAMPSHIRE STATUTE AGAINST WAGERING CONTRACTS.—“Any contract or agreement for the purchase, sale, loan, payment, or use of money or property, real or personal, the terms of which are made to depend upon, or are to be varied or affected by, any uncertain event in which the parties have no interest except that created by such contract or agreement, shall be deemed a bet or wager.’²

THE NEW YORK STATUTE AGAINST KEEPING BUCKET-SHOPS.—“Any corporation or association or officers thereof, or any copartnership or individual, who shall

¹ I. Revised Statutes of Missouri, Sec. 2221, 2222, 2223, 2224, 2225, 2226 and 2227.

² Public Statutes of New Hampshire, 818.

keep a room, shed, tent, tenement, booth, building, float or vessel or any part thereof to be used for gambling * * * or for making any wagers or bets made to depend on the future price of stocks, bonds, securities, commodities or property of any description whatever, is guilty of a misdemeanor.’¹

THE VERMONT STATUTE AGAINST BUCKET SHOPS AND SPECULATION.—“No person or corporation shall keep or cause to be kept, a ‘bucket shop,’ office, store, or other place in which is conducted, or permitted, the pretended buying or selling of stocks or bonds of a corporation, or petroleum, cotton, grain, provisions, pork, or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or in which is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying, or offering to buy such property, does not intend actually to receive the same if purchased, or to deliver it if sold.

A person or corporation, whether acting individually, or as member, officer, agent, or employee of a corporation, who violates the preceding section, shall be fined not more than one thousand dollars and not less than two hundred dollars; a person who is guilty of a second offense, in addition to the penalty above prescribed, shall be imprisoned in the county jail six months; and if a corporation, shall be liable to forfeit its charter. The continuance of such establishment after first conviction, shall be deemed a second offense.

It shall not be necessary, in order to commit the offense defined in the second preceding section, that both the buyer and seller agree to do any of the acts therein prohibited, but the offense shall be complete against a person or corporation, thus pretending or offering to

¹ Penal Code, Sec. 343.

sell, or to buy, whether the offer to sell or buy is accepted or not; and a person or corporation, communicating, receiving, exhibiting or displaying in any manner, such offer to so buy or sell, or any statements or quotations of the prices of such property, with a view to such transaction shall be deemed an accessory, and shall be fined and punished as provided in the preceding section.

A person or corporation doing business as a commission merchant, or broker, shall furnish, on demand, to any customer or principal for whom such person or corporation has executed an order for the actual purchase or sale of any of the commodities mentioned in the three preceding sections, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom sold, the time when, place where, and price at which the same was bought or sold; and if such person or corporation refuses promptly to furnish such statement upon reasonable demand, such refusal shall be prima facie evidence that such property was not bought or sold in a legitimate manner.

A person who knowingly permits any of the illegal acts mentioned in the four preceding sections, in a building, booth, or erection of which he has the care or possession, shall be fined not more than one thousand dollars, and not less than five hundred dollars. A penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted. The presiding judge of each county court in this state, at every regular term thereof, shall charge all regularly impaneled grand juries to make due investigation and report upon violations of the provisions of the preceding sections.”¹

THE WISCONSIN STATUTE AGAINST BUCKET-SHOPS AND BUCKET-SHOPPING.—“Bucket-shop defined; intent of act.

¹ Vermont Statutes, Sec. 5128, 5129, 5130, 5131, 5132.

Section 1. A bucket-shop, within the meaning of this act, is defined to be an office, store or other place wherein the proprietor or keeper thereof, either in his or its own behalf, or as the agent or correspondent of any other person, corporation, association or copartnership within or without the state, conducts the business of making, or offering to make, contracts, agreements, trade or transactions respecting the purchase or sale, or purchase and sale, of any stocks, grains, provisions, or other commodity, or personal property, wherein both parties thereto, or said proprietor or keeper, contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, closed, adjusted or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange, upon which the commodities or securities referred to in such contracts, agreements, trades or transactions are dealt in, and without a *bona fide* transaction on such board of trade or exchange; or wherein both parties, or such keeper or proprietor shall contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, deemed closed or terminated when the public market quotations of prices made on such board of trade or exchange, for the articles or securities named in such contracts, agreements, trades or transactions, shall reach a certain figure; and also any office, store, or other place where the keeper or proprietor thereof, either in his or its own behalf, or as agent as aforesaid, therein makes or offers to make, with others, contracts, trades or transactions for the purchase or sale of any such commodity wherein the parties do not contemplate the actual or *bona fide* receipt or delivery of such property, but do contemplate a settlement thereof based upon differences in the prices at which said property is, or is claimed to be, bought and sold. The said crime shall be complete against any proprietor or keeper thus offering to make any such contracts, trades or transactions, whether such

offer is accepted or not. It is the intention of this act to prevent, punish and prohibit, within this state, the business now engaged in and conducted in places commonly known and designated as 'bucket-shops,' and also to include the practice now commonly known as 'bucket-shopping, by persons, corporations, associations or copartnerships, who or which ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, petroleum, stocks and bonds.

Penalty; forfeiture. Section 2. It shall be unlawful for any corporation, association, copartnership or person to keep, or cause to be kept, within this state, any bucket-shop; and any corporation or person, whether acting individually or as a member, or as an officer, agent, or employee of any corporation, association or copartnership, who shall keep or assist in the keeping of any bucket-shop within this state, shall upon conviction thereof, be fined in a sum not less than twenty-five dollars and not more than one hundred dollars and be imprisoned in the county jail until such fine is paid, not exceeding six months; and any person or persons who shall be judicially determined guilty of a second offense under this statute, in addition to the penalty above prescribed, shall, upon conviction, be imprisoned in the county jail for a period of not less than ten days and not more than sixty days, and if a corporation, shall be liable to forfeiture of its charter; and the continuance of such establishment after the first conviction shall be deemed a second offense.

An accessory defined; penalty. Section 3. Any corporation, association, copartnership or person who shall communicate, receive, exhibit or display in any manner, any statements or quotations of the prices of any property mentioned in section one hereof, with a view to any transaction in this act prohibited, shall be deemed an accessory, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in section two of this act.

A written statement of fact may be demanded; transactions prima facie valid. Section 4. It shall be the duty of every commission merchant, copartnership, association, corporation or broker doing business as such to furnish, upon demand, to any customer or principal for whom such commission merchant, broker, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom it shall have been sold, as the case may be, the time when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, copartnership, corporation or association shall refuse to promptly furnish such statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner. Every purchase or sale, or purchase and sale, and all other transactions by or between members of any lawfully constituted chamber of commerce or board of trade, organized under or by virtue of the laws of this state, and in accordance with the charter of such corporation and the rules, by-laws, and regulations adopted thereunder, shall be prima facie valid.’¹

¹ Laws of Wisconsin, 1903, Chap. 350.

CHAPTER III.

STATUTES PERMITTING SPECULATION AND GAMBLING IN THE FORMS OF TRADE.

THE ENGLISH STATUTE AUTHORIZING SHORT SALES.—
“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called “future goods.” * * * “Contract of sale” includes an agreement to sell as well as a sale.—“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.”¹

THE NEW YORK STATUTE AUTHORIZING SHORT SALES.—
“An agreement for the purchase, sale, transfer or delivery of a certificate or other evidence of debt, issued by the United States or by any state, or municipal or other corporation, or any share or interest in the stock of any bank corporation or joint stock association, incorporated or organized under the laws of the United States or of any state, is not void or voidable, because the vendor, at the time of making such contract, is not the owner or pos-

¹ Extracts from “An Act codifying the law relating to the sale of goods.” 56-7 Vic. c. 71, s. 1, 5 & 62; L. R., Statutes, Vol. XXX, 353 (1893).

essor of the certificate or certificates or other evidence of debt, share or interest.”¹

THE WISCONSIN STATUTE AUTHORIZING SHORT SALES.—“No contract for the future purchase, sale, transfer or delivery of personal property shall be void when either party thereto intends, in good faith, to perform the same; and an intention on the part of either not to perform any such contract shall not invalidate it if the other party shall in good faith intend to perform the same. No contract shall be void because the vendor was not, at the time it was made, the owner of the property contracted to be sold, and in any action by either party for the enforcement of its terms or to recover damages for a breach thereof it shall be incompetent to show in defense, by any intrinsic evidence, that such contract had any other intent or meaning than it expresses; and it and all collateral contracts, agreements or securities growing out thereof or of which they may have formed the consideration in whole or in part shall be legal and valid; provided nothing herein shall be construed to exclude evidence of fraud in the procuring of any such contract as is first mentioned herein, or of any collateral contract, agreement or security growing out thereof, or that any such contract was not entered into upon sufficient consideration, or is not supported thereby, or that both parties intended to make a wagering contract.”²

THE WISCONSIN STATUTE MAKING BOARD OF TRADE TRANSACTIONS PRIMA FACIE VALID.—“Every purchase or sale, or purchase and sale, and all other transactions by or between members of any lawfully constituted chamber of commerce or board of trade, organized under or by vir-

¹ Session Laws of New York, 1897, page 511. See history of this statute in “Dewey on Contracts for Future Delivery,” page 18; and “Dos Passos on Stock Brokers and Stock Exchanges,” page 488.

² Statutes of Wisconsin, p. 1683. (Sec. 2319a.)

tue of the laws of this state, and in accordance with the charter of such corporation and the rules, by-laws, and regulations adopted thereunder, shall be *prima facie* valid.”¹

THE LOUISIANA STATUTE PERMITTING SHORT SALES.—“A sale is sometimes made of a thing to come; as of what shall accrue from an estate, or animals yet unborn, or such like other things, although not yet existing. It also happens sometimes that an uncertain hope is sold, as the fisher sells the haul of his net before he throws it; and although he should catch nothing the sale still exists, because it was the hope that was sold, together with the right to have what he caught.”²

TAX AND LICENSE LAWS.

THE NORTH CAROLINA STATUTE TAXING DEALERS IN FUTURES.—A license tax shall be imposed “upon every individual or firm or his or their agents, engaged in the business of selling or buying farm products, sugar, coffee, and salt and meat, railroad stocks and bonds, and stocks and bonds of other kinds not intended for *bona fide* sale and delivery, but for future delivery (commonly called ‘futures’), whether said business is done through regularly organized stock and cotton exchanges, or boards of trade, an annual license tax as follows: In towns of less than five thousand inhabitants, fifty dollars; in towns of more than five and less than ten thousand inhabitants, one hundred dollars; in towns of more than ten and less than fifteen thousand inhabitants, two hundred dollars; and in towns in excess of fifteen thousand inhabitants, three hundred dollars; provided, that this tax shall not be demanded of any cotton warehouseman, dealer in cotton, or any provision broker who takes orders in the regular course of trade only for the actual and *bona fide* delivery of cotton and other products so ordered, and

¹ Laws of Wisconsin, 1903, Chap. 350, part of section 4.

² Civil Code of Louisiana, Art. 2450, 2451.

where by the terms of the contract it is not left to the option of the party so ordering, or the party taking such order, to avoid the delivery of the produce or products, by paying the difference in the market price of such produce or products at the time of delivery; provided further, that such cotton warehouseman, dealer in actual cotton, or any provision broker does not carry on the business of buying and selling 'futures' in connection with his or their business."¹

THE TENNESSEE STATUTE PROVIDING FOR TAXING OF PRIVILEGES BY THE CITY OF MEMPHIS.—“The following named kinds of business and occupations be, and the same are hereby declared taxable privileges, and shall be taxed as herein provided; and the exercising of any of such privileges without first paying the tax hereby fixed, shall be a misdemeanor;

38. A privilege tax of \$2,000 per year is levied on each and every person, firm or corporation, and each and every agent and agency of such person, firm or corporation doing a brokerage or commission business and dealing in bonds, stock, grain, cotton or other produce or commodity, where either of the contracting parties, buyer or seller, is dealing simply for the margin, or on the prospective rise or fall of the article or thing sold, or where either of the said contracting parties have had no intention or purpose of making actual delivery or receiving the property or thing in specie.

93. Bucket shops, or dealers in futures, or agents taking orders for futures to be filled outside the State, \$1,000 per annum.”²

THE VIRGINIA STATUTE LICENSING DEALING IN OPTIONS AND FUTURES.—“The taxes on licenses to transact business shall be as follows: Any person, firm, or corpora-

¹ Public Acts of North Carolina, 1901, Chap. 9, Sec. 69.

² Digest of the Laws of the City of Memphis, 30, 37 and 43.

tion engaged in buying and selling, or who receives orders to buy or sell, cotton, grain, provisions, or other commodities, stocks or bonds, shall be deemed to be a banker or broker dealing in options and futures. Any person so dealing in options or futures without a license to transact or engage in such business shall pay a fine of not less than three hundred dollars, nor more than five hundred dollars, for each offense. Every banker or broker dealing in options or futures shall pay the sum of two hundred dollars for the privilege of transacting such business.”¹

THE WEST VIRGINIA STATUTE LICENSING BUCKET SHOPS.
—“Sec. 2. No person without a state license therefor shall * * * (e) practice the business of a stock broker, merchandise broker, or other broker, by buying or selling for others, stocks, securities or other property, for a commission or reward; or (f) practice such business by carrying on what is commonly known as a bucket-shop, or by engaging in transactions for the purchase or sale of grain, provisions, stocks, securities or other property, wherein the parties thereto or the broker intend that such transaction shall be settled according to public market quotations on any board of trade or exchange, and without a *bona fide* transaction on such board of trade or exchange, or intend that such transaction may be deemed terminated when such public market quotations shall reach a certain figure; or intend that such property shall reach a certain figure, or intend that such property shall be resold before or at the time fixed in such transaction for the delivery of such property and that the differences, between the contract prices and the market price thereof, shall be paid or received without the prior receipt or delivery of such property under the former sale.”²

¹ Virginia Code (1904) page 2231.

² Acts of West Virginia, Chap. 3, 1904.

SALES OF PROPERTY NOT IN EXISTENCE.

THE CALIFORNIA STATUTE PERMITTING SHORT SALES.—
 “Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale whether in existence or not.”¹

THE MONTANA STATUTE PERMITTING SHORT SALES.—
 “Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.”²

THE NORTH DAKOTA STATUTE PERMITTING SHORT SALES.—
 “Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.”³

THE SOUTH DAKOTA STATUTE PERMITTING SHORT SALES.—
 “Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.”⁴

¹ Civil Code of California, Sec. 1730.

² Montana Code, Sec. 2324.

³ Revised Statutes of North Dakota, Sec. 3954.

⁴ Revised Codes of South Dakota, 763, Civil Code, Sec. 1305.

